

**Department of Environmental
Conservation
Division of Water**

**Water Quality Standards
18 AAC 70
RESIDUE REVISIONS**

**Public Noticed
October, 30, 2005 - December 22, 2005
Responsiveness Summary
November 27, 2006**

1. Introduction

Summary of Project

Residues are floating solids, debris, sludge, deposits, foam, scum or any other material or substance in a water body as a result of direct or nearby human activity. The water quality standards criterion for residues addresses substances that are not dissolved in wastewater and may remain in the water body for some period of time.

The Department of Environmental Conservation is proposing to change the residue sections of the Water Quality Standards found in 18 AAC 70.020(b)(8) and (20). The proposed changes prohibit residues that form objectionable deposits, taste or odor; constitute a nuisance; or result in undesirable or nuisance species.

Opportunities for Public Participation

The Department formally published public notice of the proposed regulation on October 30, 2005. Over 2000 state and federal boards and agencies, state legislators, tribes, environmental groups, industry groups, wastewater permit holders and other interested members of the public were mailed, emailed or faxed notice of the proposed changes to the regulation. In addition to these direct contacts, the Department posted the notice online in accordance with state requirements, provided downloadable files of the draft on the Department website, and published the public notice in the Juneau and Anchorage newspapers. A public hearing was held in Anchorage and with a statewide public call-in number on December 14, 2005. The public comment period was closed at 5 p.m. on December 22, 2005 for a total of 52 days.

The Department received comments from 10 interested parties on the 2005 proposed regulation, including comments from the oral transcripts of the 2 people who testified at the public hearing. The Department also consulted with Department of Natural Resources (DNR) and the Department of Fish and Game (DFG) regarding the proposed regulation.

2006 Final Regulations

Final residue regulations were adopted by the Department and filed by the Lieutenant Governor on August 2, 2006. There were no changes from the public noticed regulations other than the addition of semicolons to separate clauses within the criteria narrative.

2. General Support and Opposition for the Change

Regulation Summary

The proposed changes conform to the narrative criteria recommended by the U.S. Environmental Protection Agency. The change allows for site-specific evaluation of whether the residue has potential conflicts with water body uses.

2.1 Comment Summary

The Department received comments of both general support and opposition to the changes in the regulation and guidance. Several comments requested more specificity in the regulation or clarification of the guidance document.

Response:

The department finds that the final regulations strike the correct balance in regulating residues. The previous regulations did not allow for any residue discharge, regardless of whether or not there is any impact to uses, which is unrealistic. In adopting the change, the Department has not relinquished any regulatory authority in determining the appropriate level of residue discharges to avoid adverse effects and, as such, continues to protect designated uses.

3. Comments on the Proposed Criteria

Regulation Summary

The final regulations enable the Department to determine violations based on a site-specific evaluation of the waterbody and the type of residue discharge. The Department will consider whether a residue constitutes a nuisance or is an objectionable deposit, odor, or taste, or results in an undesirable nuisance species to determine violations.

The criteria consider complaints, land use or other resource management plans, and whether the residue will impair the use of the waterbody.

3.1 Comment Summary

The Department received comments on the process used to determine what constitutes a nuisance or objectionable residue or results in an undesirable nuisance species (resulting in a violation). Concern was also expressed that designated uses be protected. Others inquired as to whether Note 13 (A), (B), and (C) all needed to be met before enforcement was justified.

Response:

The concepts of nuisance and objectionable have been used by the U.S. Environmental Protection Agency for aesthetics criteria (Gold Book) and take into consideration the waterbody uses in addition to the type of residue. These aesthetic criteria and their concepts may vary between individuals encountering the waterbody. The factors used in

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determining whether the presence and amount of residue constitute a nuisance, or an objectionable deposit, odor or taste, or an undesirable or nuisance species are identified in Note 13 of the water quality standards table (18 AA 70.020(b)).

Existing and designated uses are protected by the revised criteria. All water quality criteria must protect designated uses as required in 18AAC 70.020(a) and 18 AAC 70.050.

For enforcement to be justified one of the following must occur: complaint from an existing user Note 13(A), or land use plans or other resource management plans that result in a negative impact to an existing or designated use Note 13(B), or impairments to existing or designated uses Note 13(C) must be met.

3.2 Comment Summary

The Department received comments requesting the regulations clearly specify the location(s) where the criteria would be applied.

Response:

Water quality criteria do not indicate the location of their application. As with all other criteria, the residue criteria apply to all waters of the state. This includes the surface of the water, within the water column, the bottom (and sediments) of a waterbody, and adjoining shorelines that may affect water quality through stormwater runoff or tidal influences.

3.3 Comment Summary

Comments were received on the interface between the DEC regulations and other land use planning requirements.

Response:

The regulations clearly recognize that other government agencies (e.g., State, Federal, and Municipal) have planned upland land uses that may affect water quality. The regulations take into account the water quality factors which land use decisions play a pivotal role. For example, if the land uses for a coastal area include a recreation area, then the residue criteria may be more sensitive to aesthetic issues such as odor on the beach, than for water with an industrial land use plan. A designated recreation use of the water would still be protected regardless of land use plans, but the stringency necessary to protect that use might differ for purely ephemeral or aesthetic characteristics depending on current land use designations.

3.4 Comment Summary

Comments were received on the threshold to lodge a complaint.

Response:

Aesthetics vary from one community or individual to another. The Department will receive and document all complaints (i.e., the Department will not screen them). Complaints are more helpful that are based on detailed, factual descriptions. Complaints of this nature are more likely to come from those with direct experience using the water rather than from individuals not using the water.

4. Comments Not Directly Related to the Regulations

4.1 Comment Summary

The Department received comments not directly related to the regulations on how the tracking system will be used and method for responding to complaints and the role of inspectors.

Response:

The Department uses the Complaint Automated Tracking System (CATS) for all environmental regulatory programs to help foster cross program communications. All citizen complaints are logged into the CATS database and the database tracks each administrative, civil, and criminal enforcement action taken by the Department against an offender.

DEC inspectors will base any compliance decisions on the provisions contained in the requirements (e.g., 18 AAC 70.020(b), Note 13).

4.1 Comment Summary

The Department received comments asking for additional information regarding other states' standards used to regulate residues, and comments referencing other Department actions using zones of deposit.

Response:

The Department contracted for a report of regulations used in other states to regulate substances considered as residues. Most states used narrative criteria based upon the EPA recommended aesthetics criteria in the 1986 Gold Book. This report is available upon request.

Changes to other regulations or actions, such as Zones of Deposits in 18 AAC 70.210, were not made at this time.